

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

s/ John S. Bryant
U.S. Magistrate Judge

ANGEL ENRIQUE NUNEZ ESCOBAR, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 3:11-cv-994
)	
LEE GAINES, <i>et al.</i> ,)	Chief Judge Campbell
)	Magistrate Judge Bryant
Defendants.)	

**PLAINTIFFS' MOTION TO RECONSIDER AND MODIFY THE COURT'S ORDER
GRANTING DEFENDANTS AN EXTENSION OF TIME TO ANSWER
COMPLAINT**

This Court should reconsider and modify its Order dated January 10, 2012 (Docket No. 103) ("Order") which granted twelve defendants —Immigration and Customs Enforcement agents sued in the their individual capacities —a 45-day extension of time to file their response to the Complaint. The request for an extension of time was filed after the time to respond had expired and after Plaintiffs had filed motions for entry of default. This Court ruled on the request without the benefit of a response from Plaintiffs. This Court should reconsider its Order to consider evidence not previously presented to the Court, and also modify its Order to prevent manifest injustice.

The request for extension of time did not establish that the defendants' failure to act was the result of excusable neglect, as required by Federal Rule of Civil Procedure 6(b)(1)(B). Indeed, the request failed to give any reason for the untimely filing. Moreover, a 45-day extension of time will cause Plaintiffs significant prejudice, substantially delay the litigation, and is not warranted.

Accordingly, and as outlined in more detail in the memorandum of law filed contemporaneously with this motion, Plaintiffs respectfully move this court to reconsider and modify its Order.

Dated: January 13, 2012

Respectfully submitted,
/s/Jenna L. Miara
Matthew J. Piers*
José Jorge Behar*
Jenna L. Miara*
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 W. Madison Street, Suite 4000
Chicago, IL 60602
Tel: (312) 580-0100
mpiers@hsplegal.com
jbehar@hsplegal.com
jmiara@hsplegal.com

On behalf of Attorneys for Plaintiffs

Andre Segura*
Lee Gelernt*
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2660
asegura@aclu.org
lgelernt@aclu.org

Tricia Herzfeld (BPR #026014)
Legal Director
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
T: (615) 320-7142
tricia@aclu-tn.org

Cecillia D. Wang*
American Civil Liberties Union Foundation
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-0775
cwang@aclu.org

Justin Cox*
American Civil Liberties Union Foundation
Immigrants' Rights Project
230 Peachtree Street, NW, Suite 1440
Atlanta, GA 30303
T: (404) 523-2721
jcox@aclu.org

* *pro hac vice* admission

Elliott Ozment (BPR #4331)
R. Andrew Free (BPR #30513)
Law Offices of Elliott Ozment
1214 Murfreesboro Pike
Nashville, TN 37217
T: (615) 321-8888
elliott@ozmentlaw.com
afree@ozmentlaw.com

ACLU-TN Cooperating Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, a copy of the foregoing documents was filed electronically. Parties may access this filing through the Court's electronic filing system. Notice of this filing will be sent by operation of the Court's electronic filing system to all the following parties:

Kevin C. Klein
Allison L. Bussell
Assistant Metropolitan Attorneys
P.O. Box 196300
108 Metropolitan Courthouse
Nashville, TN 37219-6300

William G. McCaskill, Jr.
LeVan, Sprader, Patton & McCaskill
150 Fourth Avenue North, Suite 1020
Nashville, TN 37219

Richard C. Mangelsdorf, Jr.
Brian F. Walthart
Leitner, Williams, Dooley & Napolitan, PLLC
414 Union St., Suite 1900
Bank of America Plaza
Nashville, TN 37219

S. Delk Kennedy, Jr.
Assistant United States Attorney
110 9th Avenue South, Suite A-961
Nashville, Tennessee 37203-3870

I hereby certify that on January 13, 2012, a copy of the foregoing documents was filed electronically. Parties may access this filing through the Court's electronic filing system. Notice of this filing will be sent by U.S. Mail to all the following parties:

Steve Orvhall
Office of the Principal Legal Advisor, U.S. ICE
7701 North Stemmons Freeway
Dallas, TX 75247

Wayne Dickey
Jonathon Hendrix
Stephen McCormick
247 Venture Circle
Nashville, TN 37228

Brian Abrahamson
Bradley Epley
Christopher Koshar
Lee Gaines
Eric Lim
Lee Worsham
Christopher Lane
Patrick Hubbard
51 Century Blvd., Ste. 350
Nashville, TN 37214

/s/ Jenna L. Miara
Jenna L. Miara